**UNITED STATES DISTRICT COURT**
**DISTRICT OF MARYLAND**

KEYONNA FERRELL,

Plaintiff,

v.

GOOGLE,

Defendant.

Civil Action No. TDC-15-1604

**MEMORANDUM OPINION**

On June 2, 2015, *pro se* Plaintiff Keyonna Ferrell ("Ferrell") filed the above-captioned Complaint, ECF No. 1, together with a Motion to Proceed in Forma Pauperis, ECF No. 2. Ferrell appears indigent, therefore, she is granted leave to proceed *in forma pauperis*.

**BACKGROUND**

In the Complaint, Ferrell claims that certain images she had posted on her Pinterest[1] page remained accessible through the search engine operated by Defendant Google ("Google") even after she had removed the images from her Pinterest page. Ferrell alleges that, as a result of these images, she is experiencing retaliation, in the form of having property stolen by unnamed persons and experiencing unspecified issues with several hotels that do not appear to have any association with Google. Ferrell alleges that Google has defamed her character and seeks relief in the form of an order that the images be removed from her Pinterest account and an award of $2 million to $5 million in monetary damages for her emotional distress.

[1] It appears Ferrell is referring to the website and mobile telephone application Pinterest, on which a user creates an individual page to share photos and links with other users. *See* Pinterest (July 27, 2015), https://www.pinterest.com/.

## DISCUSSION

### I. Failure to State a Claim

Under 28 U.S.C. §1915 this Court is granted the discretion to dismiss a proceeding filed *in forma pauperis* if it determines that the complaint is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2)(B)(i)-(iii). Here, the Complaint fails to state a claim. Under Federal Rule of Civil Procedure 8, a plaintiff is required to provide "a short and plain statement of the claim showing that the pleader is entitled to relief," and each averment of a pleading must be "simple, concise, and direct," Fed. R. Civ. P. 8(a)(2) & (d)(1). A pleading must allege enough facts to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible when "the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Although district courts have a duty to construe self-represented pleadings liberally, a *pro se* plaintiff must nevertheless allege facts that state a cause of action and provide enough detail to illuminate the nature of the claim and allow defendants to respond. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) (stating that the duty to construe *pro se* pleadings liberally does not require courts to "conjure up questions never squarely presented").

In this case, the Complaint does not state a plausible defamation claim against Google. In a case based on diversity jurisdiction, 28 U.S.C. § 1332(a) (providing federal jurisdiction over civil actions in which the parties are citizens of different states and the amount in controversy exceeds $75,000), the district court applies the law of the state in which the court is located, in

this case Maryland, including the forum state's choice of law rules. *Colgan Air, Inc. v. Raytheon Aircraft Co.*, 507 F.3d 270, 275 (4th Cir. 2007). Defamation is a tort claim. Under Maryland law, the tort doctrine of *lex loci delicti* provides that the substantive law to be applied in a tort case is that of the state in which the alleged wrong occurred, which appears most likely to be Virginia in this case.[2] *Philip Morris, Inc. v. Angeletti*, 752 A.2d 200, 230 (Md. 2000). Under Virginia law, the elements of defamation are "(1) publication of (2) an actionable statement with (3) the requisite intent." *Schaecher v. Bouffault*, 772 S.E.2d 589, 594 (Va. 2015) (internal citation and quotation marks omitted). "An 'actionable' statement is both false and defamatory." *Id.* Words are defamatory if they tend to "harm the reputation of another as to lower him in the estimation of the community," hold a person "up to scorn, ridicule, or contempt," or are calculated to render a person "infamous odious, or ridiculous." *Id.* (internal citation and quotation marks omitted).

Here, Ferrell's sole allegation is that she put information on the internet that remained accessible through the Google search engine and thus available for viewing by the public after she had removed the images from Pinterest. Nothing about this allegation suggests that the information made available was false. Ferrell therefore fails to state a claim for defamation. Furthermore, the Court is unable to identify any other cause of action based on the allegations in

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[2] The Complaint does not allege where any of the incidents occurred. Ferrell has provided the Court with mailing addresses in Virginia and South Carolina. Because Ferrell has indicated that her preferred mailing address is in Virginia, it seems most likely that Virginia is where she resides and where the incidents occurred. The Court therefore applies Virginia law. However, the Court's ruling would be the same regardless of whether the law of South Carolina, or even Maryland, was applied instead. Like Virginia, both South Carolina and Maryland require a plaintiff alleging a defamation claim to show that the statement in question was false and defamatory. *See Fountain v. First Reliance Bank*, 730 S.E.2d 305, 309 (S.C. 2012); *Piscatelli v. Van Smith*, 35 A.3d 1140, 1147 (Md. 2012). As discussed above, Ferrell has failed to allege plausibly that the published materials were false.

Ferrell's Complaint. Thus, the Complaint fails to state a claim upon which relief may be granted and is dismissed.[3]

**II. Motion to Seal**

Ferrell also filed a Motion to Seal the case on June 10, 2015. ECF No. 3. The full text of the Motion states: "Please [s]eal all civil suits filed including address, names and [d]ocuments immediately [sic]." *Id.* On July 6, 2015, Ferrell filed a second Motion to Seal, ECF No. 5, in which she supplemented her original request by asserting that the Court should seal all filings in this civil case because "celebrities and [B]arack [are] involved," making the case "substantially more noteworthy." *Id.* at 1.

Local Rule 105.11, which governs the sealing of all documents filed in the record, states in relevant part: "Any motion seeking the sealing of pleadings, motions, exhibits or other documents to be filed in the Court record shall include (a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection." Local Rule 105.11 (D. Md. 2014). The rule balances the public's general right to inspect and copy judicial records and documents, *see Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978), with competing interests that sometimes outweigh the public's right, *see In re Knight Publ'g Co.*, 743 F.2d 231, 235 (4th Cir. 1984). The

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[3] The Court also notes that there is a significant question whether venue is proper in this District. Venue would be proper if the defendant is a resident of Maryland, or if a substantial part of the events or omissions giving rise to the claim occurred in Maryland. 28 U.S.C. § 1391(b). There is no indication that any of events in this case occurred in Maryland, and there is a substantial question whether defendant Google, a corporation headquartered in California, can be deemed to be a resident of Maryland. *See* 28 U.S.C. § 1391(c)(2) (noting that a corporation is "deemed to reside in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question"). Thus, even if the Complaint stated a cognizable claim, this action likely should have been brought in Virginia or South Carolina, where Ferrell presumably accessed Pinterest, or in California, where there is undoubtedly personal jurisdiction over Google.

common-law presumptive right of access can only be rebutted by showing that "countervailing interests heavily outweigh the public interest in access." *Doe v. Pub. Citizen*, 749 F.3d 246, 265-66 (4th Cir. 2014) (quoting *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988)). Because neither of the Motions to Seal identify such a countervailing interest, the Motions are denied.

**CONCLUSION**

For the foregoing reasons, the Motion to Proceed in Forma Pauperis is GRANTED. The Motions to Seal are DENIED. The case is DISMISSED for failure to state a claim. A separate Order follows.

Date: July 30, 2015

THEODORE D. CHUANG
United States District Judge